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COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 1992

Addendum

ST. KITTS AND NEVIS

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I. Age of Majority Act 1983 (No. 15 of 1983)

II. Juvenile Act (Cap. 105)

III. The Protection and Child Welfare Board Act 1994

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* May be consulted in the files of the Centre for Human Rights.

INTRODUCTION

1. The twin-island State of St. Kitts and Nevis (SKN) is the smallest English-speaking independent State in the Caribbean. The total area is 118 square miles. The estimated population at the end of 1989 is 43,000 of which 42 per cent is below the age of 20 years. About 96 per cent of the population is of African descent with a small proportion of European extract.

2. The population of SKN has not increased over the last 135 years as migration to North America and Europe has been substantial. Table 1 below gives the population growth in SKN. It reinforces the enlightened view that the children of SKN are a valuable resource and need to be educated, trained and nurtured to take up opportunities and employment beyond the territory of SKN and this trend will continue despite restrictions on immigration by many Western countries.

Table 1. Population size and growth 1871-1980

Year	Population	Rate of growth p.a.
1871	39 872	0.28
1881	41 001	0.70
1891	43 963	-0.33
1901	42 556	-0.82
1911	39 228	-1.43
1921	33 984	0.77
1946	41 206	1.51
1960	50 883	-1.51
1970	45 327	-1.16
1980	43 309	-0.45

Source: Caribbean Community, 1980/81 Population Census of the Commonwealth Caribbean, Volume 3: St. Christopher/Nevis.

3. The present legal system of SKN was inherited from the United Kingdom during the colonial period. SKN was the mother colony established by the British in 1623 in the West Indies. In 1967 SKN became an Associated State. It achieved independence on 19 September 1983. It has a Magistrates Court and a High Court. The Court of Appeal is itinerant in the member States of the Organization of East Caribbean States (OECS). It hears cases on appeal from the Magistrates Court, High Court and the Juvenile Court.

4. SKN has a relatively high per capita income (US$ 3,990). It borders on a middle-income country. It has a small GDP (EC$ 451 million). It is important that the Committee on the Rights of the Child review this report on

the premise that it is difficult for a small State such as SKN to expand the institutional, educational and administrative structures of the Government of SKN with a view to protecting and promoting children's rights beyond a certain limit due to financial and other constraints, but remains committed to children by pursuing a policy of human development in a cross-sectoral manner.

I. GENERAL MEASURES OF IMPLEMENTATION

5. In an effort to pursue the policies and principles enshrined in the Convention in SKN:

(a) The Government has undertaken legal reforms such as the Law (Miscellaneous Provisions) Act 1992 and the Probation and Child Welfare Act 1994 to implement certain aspects of the Convention more effectively in the internal legal order;

(b) The Department of Community Affairs has held workshops, in collaboration with other governmental and non-governmental agencies, to sensitize both governmental and non-governmental agencies on the provisions of the Convention. Workshops were held in St. Kitts and in Nevis and recommendations were made to the Government to take further steps for the implementation of the Convention;

(c) The Department of Community Affairs has also taken action to educate and sensitize relevant sectors within the community on the Convention and related issues;

(d) The Early Childhood Development Unit in the Ministry of Education provides and coordinates activities for all day-care centres and preschools. During the month of June, which has been designated Child Month, the Unit holds a month-long programme of activities which involves the full participation of children and their parents;

(e) UNICEF on numerous occasions has provided advice in relation to implementation of the Convention by funding workshops and experts and training of personnel dealing with children.

6. The policies of the Government of SKN on the rights of the child are pursued together with those on the rights of women, as they complement each other. The Government of SKN has ratified the Convention on the Elimination of All Forms of Discrimination against Women and is now in the process of acceding to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. Implementation of these two conventions will complement the implementation of the provisions of the Convention on the Rights of the Child.

7. It is important to note that the Convention does not constitute law in the internal legal order. SKN follows a "dualist" tradition, whereby treaty law (as opposed to customary international law) requires legislative transformation. There is a need, therefore, to enact national legislation, where these do not already exist, to give effect to certain aspects of the Convention so far not covered by existing legislation or English common law or equity.

8. There has been some reorganization of the administrative structures of SKN in order to ensure effective implementation of the Convention in 1996. A Probation and Child Welfare Board has been appointed under the Probation and Child Welfare Board Act 1994, and will address some of the pressing issues such as child abuse, foster care and adoption in the best interest of the child. However, it is necessary that this Act be further amended to grant the Board corporate legal status in order to obtain locus standi in courts in legal matters. It is also necessary to amend the Act further in order to provide the Board additional functions and powers to deal with drug abuse (art. 33) and AIDS (art. 34 - Sexual abuse) in relation to children.

II. DEFINITION OF THE CHILD

9. The age of attainment of majority in SKN is 18 years. It was 21 years until the Age of Majority Act 1983 came into effect. The Act has provided:

> "Unless the context otherwise requires, the provisions of this Act shall apply for the construction of 'full age', 'majority', 'minor', 'infant', 'infancy', and similar expressions in any statute or statutory provision whether passed or made before, on or after the date of commencement of this Act..."

10. Thus, the Age of Majority Act 1983 has amended the Adoption Act, the Guardianship of Infants Act, the Marriage Act and Matrimonial Causes Act, the Registration of Births, Deaths and Marriages Act and the Social Security Act.

11. There is no specific provision of an age established for legal counselling in SKN without parental consent, but current practice suggests that this would depend on the maturity of the minor and the matter on which the legal counselling is required.

12. The Juvenile Act (Cap. 39) makes provision for the protection of children and young persons. This Act has been amended and now defines "juvenile" as a person under the age of 18 years, and "young person" a person who has attained the age of 14 years and is under the age of 18 years.

13. The legal age at which a child may undertake part-time or full-time employment is at the age of 16 years as provided in the Employment of Children (Restriction) Act.

14. The age of sexual consent as provided in the Offences against the Person Act is over 16 years. A person may enter into a marriage legally at 16 years of age without the consent of a parent or guardian as provided in the Marriage Act.

15. The law does not state precisely the age at which a child may voluntarily give testimony in court, but rather seeks to provide safeguards to ensure that a child who gives testimony understands the duty of speaking the truth and that his privacy is protected as provided in the Juvenile Act.

16. The age of criminal liability is eight years. In the words of section 3 of the Juvenile Act, "It shall be conclusively presumed that no child under the age of eight years can be guilty of any offence"; it thereby incorporates the English common law rule doli incapax.

III. GENERAL PRINCIPLES

17. The general principles relating to children are based on the rules of English common law and equity. The local legislation relating to adoption, guardianship, marriage, matrimonial causes, employment, status of children born out of wedlock and maintenance of children constitute a statutory superstructure or an amalgam to the English common law and equity.

18. The SKN Constitution offers protection to every person, including the child. The chapter entitled "Fundamental Rights and Freedoms" protects children in the following manner:

(a) Life, liberty, security of the person, the enjoyment of property and the protection of the law;

(b) Freedom of conscience, of expression and peaceful association; and

(c) Protection for his personal privacy, for the privacy of his home and other property and from deprivation of property without compensation.

19. It is important to note that the Constitution of SKN stipulates that no child is discriminated against by reason of being born out of wedlock. It is a salutary provision not found in any other Constitution in the world and thereby removes the scar of illegitimacy from children in appropriate circumstances. The rights of the mother have to be strengthened and the whole concept of family in a Caribbean context needs to be further investigated on the basis of "cultural relativism" in order to enhance the efficacy of this constitutional provision in the internal legal order.

20. The Constitution of SKN grants the right to apply to the High Court in order to seek redress where there is any contravention of fundamental rights.

IV. CIVIL RIGHTS AND FREEDOMS

21. The Registration of Births and Deaths Act requires that every child be registered immediately after birth. Every birth which is so registered must be recorded and the Certificate of Birth is provided accordingly. It is an important document for every parent who wishes to enrol his child in school or to travel abroad or to obtain a driver's licence or a passport.

22. A declaration of paternity may be issued under the Status of Children Act on the application of the mother, the father, or a person with a "proper intention", and thereby provide a measure of legal recognition to children born out of wedlock to exercise their civil rights and freedoms.

23. The rights of children to enjoy freedom of expression, freedom of thought, conscience and religion and freedom of peaceful assembly are enshrined in the Constitution of SKN.

24. In recent years, parents and teachers have been encouraged to accept the child's right to expression. This has been an area of weakness in many legal systems. For many years the principle that "children should be seen and not heard" at home and school existed, but this is gradually being replaced and children are encouraged to participate at every level in school and society in SKN.

25. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment is also enshrined in the Constitution of St. Kitts and Nevis.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

26. The protection of the family environment and provision for alternative care are in the "best interest of the child" as provided in the Convention. The object of the Guardianship of Infants Act and the Adoption Act is to provide a family environment in the best interest of the child. Provision for alternative care is made in the Probation and Child Welfare Board Act when this is absolutely necessary to ensure the best interest of the child. SKN has recently acceded to the Hague Convention on Civil Aspects of International Child Abduction and, a fortiori, it is necessary to pass some delegated legislation to give effect to this Convention in order to regulate and expedite such court proceedings.

27. The legal responsibilities and duties of parents and guardians are set out in the Juvenile Act. This Act provides that a parent or other person legally liable to maintain a juvenile shall be deemed neglected if that person, being able to do so, fails to provide adequate food, clothing, rest, medical aid or lodging. In appropriate cases, the Government of SKN provides assistance to needy families and children.

28. Similarly, the Maintenance Act provides that parents have the responsibility to maintain their children, thus seeking to ensure that every child has a standard of living adequate for his physical, mental, spiritual, moral and social development (art. 27). The necessary machinery exists within the court system to enforce reciprocal maintenance orders, but the intent of the legislation is sometimes frustrated by factors such as the difficulties and expense of finding delinquent fathers outside the country and the non-existence of any bilateral treaty arrangements with other countries to facilitate such action.

29. In order to provide a proper family environment as outlined in articles 10, 20 and 21 of the Convention:

(a) The Magistrate Court administers child custody and determines, in cases where parents do not live together, which parent shall have custody of the child. The Court, by court order, awards visiting rights to parents who are separated from their children;

(b) The Probation and Child Welfare Board has responsibility for the investigation and supervision of children who are in need of care and

protection in a family environment. They are responsible for the placement of children in institutions of foster care, supervising their progress and evaluating such placement (arts. 20 and 25).

30. Adoption is permitted after investigation of the child's circumstances and the health of both child and adoptive parents. The adoption must be approved by the High Court. The process includes certain safeguards such as a waiting period after birth before a mother can sign a consent for her child to be adopted. Intercountry adoption is allowed but not yet regulated in terms of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (1993) to which SKN may become a State party in due course.

31. In the last decade, there has been increasing public awareness of the need to protect children from abuse and neglect (art. 19) and to promote the recovery of abused children from the trauma of their experiences (art. 39). To address these concerns consideration is being given to vesting in the Board wider powers and corporate legal status as indicated above.

VI. BASIC HEALTH AND WELFARE

32. The Public Health Act provides for basic health. It governs a wide spectrum of health-related activities affecting both adults and children, such as the Hospital and Primary Health Care Units. These bodies deal with public sanitation and the investigation of disease. The Act provides for making regulations to carry out the provisions of the Act, including immunization of children without a charge; as a result 100 per cent immunization has been achieved in SKN in terms of the WHO requirements.

33. The Minister of Health has final responsibility for the administration of matters affecting the health of children. There is a Permanent Secretary who, with the assistance of a number of directors, is responsible for various administrative areas and a Chief Medical Officer who, in turn, leads a number of health professionals supported by various paramedical personnel.

34. Services for disabled children are provided by the Government in accordance with article 23, both as regards special care and education. A team of children has been participating regularly in the Special Olympics with assistance provided by Government, the private sector as well as NGOs. There has been an increase in public awareness of the needs of the disabled, largely due to the activities of a number of governmental and non-governmental organizations. One serious area of weakness is the limited facilities for the rehabilitation of disabled children and this requires external assistance.

35. The health of children in government care is part of the responsibility of health professionals, who assess the health status and environmental conditions of government children's homes on a quarterly basis and provide health care as needed to the children. Efforts are being made by the Paediatric League, a non-governmental organization, to establish a children's ward at the JNF Hospital which requires some assistance from external sources.

36. With regard to health services (art. 24), there is an aggressive public education programme on all targets, e.g. immunization, control of diarrhoeal

diseases, breastfeeding, adequate infant nutrition and the promotion of prenatal and postnatal care and aids. The public education programme includes the use of the mass media, dramatization, brochures, etc.

37. The maintenance of children is paramount to the welfare of the children. The Magistrate's Code of Procedure Act, the Laws (Miscellaneous Provisions) Act 1992, the Guardianship of Infants Act, the Matrimonial Causes Act, the Maintenance of Children Act and the Social Security Act have been amended from time to time to provide such welfare to children. The need to have provisions for the attachment of earnings is being acquired.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

38. The Education Act 1975 makes legal provision for all matters relating to education. The structure of the school system in SKN is as follows:

(a) Primary education, which consists of full-time education generally suitable to the requirements of students who are not over the age of 12 years;

(b) Secondary education, which consists of full-time education generally suitable to the requirements of students who have attained the age of 11 years and are not over the age of 19 years; and

(c) Tertiary education, consisting of:

(i) Full-time education in teacher-training;

(ii) Preparation for external degree examinations at the University of the West Indies and extraregional institutions;

(iii) Leisure-time occupation in creative activities.

39. The administration is controlled by the Ministry of Education which is headed by a Minister, who has overall responsibility for its operations. There is a Permanent Secretary, a member of the civil service, and a Chief Education Officer who has final responsibility for the day-to-day management of the Ministry's programmes.

40. The policies of the Government of SKN, for the most part, are in keeping with the principles outlined in the Convention. There is provision for compulsory education between the ages of 5 and 16 years. The cost of tertiary education makes it difficult for the Government of SKN to establish a fully-fledged tertiary education system due to the small population and the substantial cost. Such education is necessary to create an epistemic community to undertake the numerous obligations of an independent sovereign State, and therefore the Government of SKN has taken measures to address this gap in the education system.

41. In an effort to provide tertiary education, the Government has given the undertaking that no child will be denied tertiary education because of an inability to pay. The Government contributes almost EC$ 700,000 per annum to

the University of the West Indies. It has also provided student loan schemes with the support of the Caribbean Development Bank to meet the costs of students following tertiary education.

42. With special regard to vocational training, a factor which creates difficulty is the high cost of providing and maintaining equipment in this area. The cost of retaining technical teachers is also high.

43. The Government of SKN fully recognized the right of the child to participate fully in leisure, recreation and cultural activities as set out in article 31. To this end, all government schools were built with adequate play areas and breaks for the purpose of recreational activities are included in the curricula. As a result, children are constantly engaged in cricket, football and tennis and four persons from SKN have been able to secure positions in the famous West Indies Cricket Team.

44. Children are encouraged to participate in cultural activities. An example of this is the annual festival in which all schools enter events in song and dance relating to their heritage. The children are also exposed to information pertaining to national and regional culture including the introduction of a recent programme to teach the steel pans in schools.

VIII. SPECIAL PROTECTION MEASURES

45. Children in situations of emergency. There are no legislative provisions in force in SKN to deal with refugee children or children in armed conflicts as such situations are non-existent in SKN.

46. Children in conflict with the law. The administration of juvenile justice in SKN conforms to some extent with article 40 of the Convention. This article stipulates that the child is presumed innocent until proven guilty and that a child should be informed directly or through his legal guardians of the charges against him or her. It is also necessary that such matters should be determined without delay by a judicial body and to have his or her privacy fully respected at all stages of the proceedings. However, the Juvenile Act (Cap. 39) does not encapsulate "The Beijing Rules".